

DEPARTMENT OF STATE REVENUE

Revenue Ruling # 2000-02 ST
February 17, 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax – Sale of Bone Void Filler

Authority: IC 6-2.5-5-18, Rule 45 IAC 2.2-5-28

The taxpayer requests the Department to rule on the application of sales/use tax to the sale of a bone void filler.

STATEMENT OF FACTS

The taxpayer's product is a porous calcium phosphate resorbable bone void filler for the repair of bony defects. It is an osteoconductive porous implant with a trabecular structure that resembles the multidirectional interconnected porosity of human cancellous bone. The implant is provided in block and morsel forms.

The bone void filler guides the three-dimensional regeneration of bone in the defect site into which it is implanted. When the bone void filler is placed in direct contact with viable host bone, new bone grows in apposition to the calcium phosphate surfaces of the implant. As the implant resorbs, bone and other connective tissues grow into the space previously occupied by the bone void filler.

The bone void filler is indicated for use in the treatment of surgically created osseous defects or osseous defects created from traumatic injury to the bone. The bone void filler is intended to be gently packed into bony voids or gaps of the skeletal system (i.e., the extremities, spine and pelvis).

DISCUSSION

IC 6-2.5-5-18 provides that sales of medical equipment, supplies and devices are exempt from sales/use tax if the sales are prescribed by a person licensed to issue the prescription. Rule 45 IAC 2.2-5-28, interpreting IC 6-2.5-5-18, defines "medical

equipment, supplies and devices" as items, the use of which is directly required to correct or alleviate injury to, malfunction of, or removal of a portion of the purchaser's body.

It can be seen that for the sale of medical equipment, supplies and devices to be exempt from sales/use tax they must be both prescribed by a person licensed to issue the prescription and be directly required to correct or alleviate injury to, malfunction of, or removal of a portion of the purchaser's body. Here, the bone void filler is directly required to correct or alleviate injury to, malfunction of, or removal of a portion of the purchaser's body, therefore, the sale of same, when prescribed by a person licensed to issue the prescription, is not subject to sales/use tax.

RULING

The Department rules that the taxpayer's sale of bone void filler is not subject to sales/use tax to the extent the bone void filler is prescribed by a person licensed to issue the prescription.

CAVEAT

This Ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

DEPARTMENT OF STATE REVENUE